

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 10-CV-679
	)	
M & S ENTERPRISES	)	
DUANE KITTELESON	)	
JACK DOUTHITT,	)	
ANITA POEHLMAN,	)	
KEN DESMET,	)	
ANNA DESMET	)	
	)	
Defendants.	)	
	)	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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The above matter coming on to be heard before the above Court, Honorable Barbara B. Crabb, United States District Judge for the Western District of Wisconsin, on May 11, 2011, the Plaintiff, United States of America ("Plaintiff"), having appeared by its attorney, the Office of the United States Attorney for the Western District of Wisconsin, and no appearance having been made on behalf of the Defendants herein except as may be noted on the record; and the Clerk of the United States District Court for the Western District of Wisconsin having duly entered the default of said Defendants; and it further appearing that due notice of application for judgment has

been made to the Defendants, and that a waiver of service was filed with the Clerk of the United States District Court for the Western District of Wisconsin for M & S Enterprises, Duane Kittleson, and Anita Poehlman, and that proof of service was filed with the Clerk of the United States District Court for the Western District of Wisconsin for Ken Desmet, Anna Desmet, and Jack Douthitt, therefore makes and files the following findings of fact and conclusions of law constituting its decision in this action.

### **Findings of Fact**

1. The allegations of the complaint are proven true.
2. There is now due and unpaid on said note, loan agreement, and mortgage as of May 11, 2011, the following sum \$353,494.96 (Attachment A.).
3. No proceedings have been had at law or otherwise for the recovery the sum secured by said note, loan agreement, and mortgage.
4. The real estate is so situated that it cannot be sold in parcels without injury to the interest of the parties.
5. The mortgaged premises are described as follows:

A parcel of land in Government Lot 6, Section 25, Township 43 North, Range 3 East, Iron County, Wisconsin, described as follows:

Commencing at the quarter corner common to Sections 25 and 26, marked by a brass capped iron pipe; thence S89°53'00"W, (solar bearings), 864.08 feet along the South line of said Section 25 to the POINT OF BEGINNING, marked by a 1" iron pipe; thence continuing S89°53'00"W, 203.00 feet along the South line of said Section 25 to a 1" iron pipe on the Northeasterly right of way line of US Highway No. 51; thence N47°20'38"W, 145.90 feet along said Northeasterly right of way line to a 1" iron pipe on the Northeasterly

right of way line of a proposed Town Road; thence along said right of way line N47°12'52"E, 80.04 feet to a 1" iron pipe and 126.00 feet along the arc of a curve concave Northwesterly with a radius of 265.30 feet, a chord of which bears N33°36'31"E, 124.82 feet to a 1" iron pipe on the Southerly right of way line of a second proposed Town Road; thence S71°15'32"E, 192.26 feet along said right of way line to a 1" iron pipe; thence leaving said right of way line S0°07'00"E, 195.00 feet to the POINT OF BEGINNING. Said parcel of land contains 1.30 acres. Subject to any easements, restrictions, or right of way of record or of use and to a perpetual easement for public utilities.

6. The mortgaged premises have not been abandoned.
7. Due notice of the pendency of this action was duly filed, after the filing of the complaint herein, on the filing of the Lis Pendens on March 28, 2011, and more than twenty (20) days prior to the trial of this action, in the Office of the Register of Deeds for Iron County, Wisconsin, in the manner and form required by law.

#### **Conclusions of Law**

1. Plaintiff is entitled to judgment of foreclosure and sale in the usual form, as prayed for in Plaintiff's complaint, and in accordance with the above findings of fact.
2. M & S Enterprises, Duane Kittleson, and Anita Poehlman, waived service of the summons and complaint in the above action, and the signed waiver form has been filed with the Court, as set forth in the declaration of Heidi L. Luehring, Assistant United States Attorney, Office of the United States Attorney, on file herein; the time for answering said complaint has expired; no answer or other response or appearance has been served on or received by Plaintiff's attorney from or made by M & S Enterprises,

Duane Kittleson, and Anita Poehlman; and the Clerk of Court has duly entered the default of said Defendants.

3. Ken Desmet, Anna Desmet and Jack Douthitt, were served a Summons and Complaint by the United States Marshal's Service, and proof of service has been filed with the Court, as set forth in the declaration of Heidi L. Luehring, Assistant United States Attorney, on file herein; the time for answering said complaint has expired; no answer or other response or appearance has been served or received by Plaintiff's attorney from or made by Ken Desmet, Anna Desmet, and Jack Douthitt; and the Clerk of Court has duly entered the default of said Defendants.

4. Plaintiff is entitled to recover from the Defendants the following sum \$354,857.16 (Attachment A.).

5. The mortgaged premises shall be sold as a whole.
6. The mortgaged premises have not been abandoned.
7. Deficiency judgment is not being sought in this action.
8. Sales of the premises shall be conducted by or under the directions of the United States Marshal for the Western District of Wisconsin. Notice of sale shall be made by publication in the Iron County Miner, a newspaper published in Iron County, City of Hurley, County of Iron, State of Wisconsin.
9. The Defendants and all persons claiming under or through it, after the

filings of notice of the pendency of this action, shall be forever barred and foreclosed of all right, title, interest, and equity of redemption in said mortgaged premise so sold.

Now, on application of the United States Attorney for the Western District of Wisconsin, attorney for Plaintiff,

IT IS ORDERED that judgment of foreclosure and sale of said mortgaged premises, in the usual form as provided by and in accordance with the above findings of fact and conclusions of law, be entered in this action.

Dated this 11th day of May, 2011.

BY THE COURT:

Barbara B. Crabb

BARBARA B. CRABB

United States District Judge

Entered at Madison, Wisconsin, this \_\_\_\_\_ day of May, 2011.

PETER OPPENEER

Clerk of Court

ATTACHMENT A

UNITED STATES OF AMERICA v. M & S ENTERPRISES, DUANE KITTELESON,  
JACK DOUTHITT, ANITA POEHLMAN, KEN DESMET, ANNA DESMET  
Case Number 10-cv-679

a. Principal as of May 11, 2011 \$327,673.06

b. Interest as of May 11, 2011 \$ 25,821.90

c Late Fees \$ 0.00

Subtotal \$353,494.96

d. Court Cost and Disbursements:

(1) Attorney's Fees \$ 200.00

(2) Marshal's Fees \$ 932.20

(3) Filing Lis Pendens \$ 30.00

(4) Title Opinion \$ 200.00

(5) Publishing Fees \$ 0.00

Subtotal \$1,362.20

**TOTAL AS OF MAY 11, 2011 \$354,857.16**

